

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Jeff EDER

Serial No.: 10/025,794

Filed: December 26, 2001

For: A Process Optimization System

Group Art Unit: 3693

Examiner: Richard Weisberger

Brief on Appeal

Sir or Madam:

The Appellant respectfully appeals the rejection of claim 48, claim 49, claim 50, claim 51, claim 52, claim 53, claim 54, claim 55, claim 56, claim 57, claim 58, claim 59, claim 60, claim 61, claim 62, claim 63, claim 64, claim 65, claim 66, claim 67 and claim 68 in the February 20, 2009 Office Action for the above referenced application. The Table of Contents is on page 2 of this paper.

Table of Contents

1. Real party in interest	Page 3
2. Related appeals and interferences	Page 3
3. Status of claims	Page 3
4. Status of amendments	Page 3
5. Summary of claimed subject matter	Pages 3 - 9
6. Grounds of rejection to be reviewed on appeal	Page 9
7. The Argument	Pages 9 - 22
8. Conclusion	Page 22
9. Claims appendix	Pages 23 - 27
10. Evidence appendix	Pages 28 - 39
11. Related proceedings appendix	Page 40

1. Real party in interest

Asset Reliance, Inc. (dba Asset Trust, Inc.) is the assignee of 100% interest in the above referenced patent application.

2. Related appeals

An appeal for U.S. Patent Application 10/012,375 filed December 12, 1001 may be affected by or have a bearing on this appeal.

3. Status of Claims

Claim 48, claim 49, claim 50, claim 51, claim 52, claim 53, claim 54, claim 55, claim 56, claim 57, claim 58, claim 59, claim 60, claim 61, claim 62, claim 63, claim 64, claim 65, claim 66, claim 67 and claim 68 are rejected and are the subject of this appeal. Claim 35, claim 36, claim 37, claim 38, claim 39, claim 40, claim 41, claim 42, claim 43, claim 44, claim 45, claim 46 and claim 47 have apparently been allowed. Claims 1 – 34 were previously cancelled without prejudice.

4. Status of Amendments

An Amendment/Reply with an amendment to claim 35, claim 44, claim 45, claim 48, claim 58, claim 59 and claim 68 was submitted on August 20, 2009. The amendments to claims 48, 58, 59 and 68 are included in this appeal.

5. Summary of Claimed Subject Matter

One embodiment of a process optimization system according to the present invention is best depicted in Figure 1 of the specification for the instant application. Figure 1 gives an overview of the three major processing steps which include data extraction and storage (200), data analysis (300) and reporting the results of the analysis (400). The support in the specification for each claim is summarized below.

Independent Claim 48 - A first embodiment of the process optimization system is exemplified in independent, claim 48 where an article of manufacture directs a computer system (100) to prepare data from organization databases, external databases and the Internet for use in processing and uses part of the prepared data to develop a model that identifies a contribution of one or more elements of value, one or more external factors and one or more risks to an organization value and risk by a segment of value. Process data are prepared in a similar manner and then combined with the organization model to allow simulation of the impact of a process on the financial performance of the organization and the identification of the optimal set of process features. Support for the specific steps contained in the claim can be found in the

specification and drawings as detailed below:

The computer system (100) is described in FIG. 3, reference numbers 100, 110 – 118, 120 – 128 and 130 – 138 and line 7, page 14 through line 2, page 15 of the specification.

a) transforming a plurality of organization related transaction and text data into an integrated database - data related to a commercial organization are transformed into an integrated database as described in FIG. 5A, reference numbers 201, 202, 203, 204, 206, 207, 208, 209, 210, 212 and 213, FIG. 5B, reference numbers 221, 222, 223, 224, 225, 227 and 232, FIG. 5C, reference numbers 228, 233 and 251 and line 21, page 16, through line 20, page 26 of the specification and line 1, page 2 through line 33, page 7 of the June 5, 2007 amendment incorporating material from cross referenced applications.

b) transforming a plurality of organization related transaction and text data into a computational model of organization financial performance that relies on a plurality of transformed data inputs and identifies a contribution to an organization market value and an organization risk for each of one or more elements of value, external factors and risks for each of one or more segments of enterprise value by learning from the data - the computer system (100) then transforms the data into a computational model of financial performance that identifies a contribution to an organization market value of one or more elements of value, external factor and risks by a segment of value by analyzing the data as described in FIG. 6C reference numbers 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353 and 354, FIG. 6D reference numbers 358, 361, 363, 364, 365, 366, 367, 368 and 369, FIG. 6E reference numbers 371, 372, 373, 374, 375, 376, 377, 378, 379 and 380, FIG. 6F reference numbers 383, 384, 385, 386, 387, 388, 389, 392, 393, 394 and 395, line 20, page 14 through line 2, page 55 of the June 5, 2007 amendment incorporating material from cross referenced applications.

c) obtaining a process specification that identifies one or more expected process outputs and a plurality of process feature data - the computer system (100) also obtains a process specification, a plurality of process feature data and optionally identifies an impact of each feature on one or more expected process outputs as described in FIG. 5A, reference number 207, line 11, page 6 through, line 10, page 7 and line 20, page 13 through line 22, page 16 of the specification.

d) optionally identifying an impact of each process feature on the expected process outputs - the process management database (30) normally identifies features used to achieve the different performance levels (see U.S. Patent Application 2002/0010571 for an example). As described in the specification, simulation programs such as MatLab, Simulink, SPICE, etc. can optionally be used to generate performance data for forecast changes in process operation by calculating

overall external factor consumption for the process and/or by forecasting process performance using a new set of resources and/or features as described on line 5, page 14 through line 12, page 14 of the specification.

e) *mapping the expected process outputs to the computational model of organization financial performance* - the expected process outputs are then mapped to the model of financial performance as described in FIG 5A, reference number 207, line 11, page 6 through, line 10, page 7 and line 20, page 13 through line 22, page 16 of the specification

f) *creating a financial simulation model for the organization using said mappings, model and process data* - a financial simulation model is created using said mappings and data as described in FIG. 6A, reference numbers 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 311, FIG. 6B, reference numbers 321, 322, 323, 324, 325, 326, 327, 328, 329, 331, 333 and 335, line and 12, page 21 through line 15, page 29 of the specification.

g) *determining an optimal mix of process features using the output from said simulation model in an optimization analysis* - the simulation model is used to determine an optimal mix of process features as described in FIG. 6A, reference numbers 301, 311, FIG. 6B, reference numbers 321 – 329, 331, 333 and 335, line and 12, page 21 through line 15, page 29 of the specification.

h) *displaying the optimal mix using a paper document or an electronic display* - as described in FIG. 7 and FIG. 8, reference numbers 402 and 403, FIG. 9 and line 1, page 30 through line 3, page 32 of the specification.

Claim 49 - the limitations associated with claim 49 are described in FIG. 5A, reference number 206 and line 30, page 16 through line 2, page 17 of the specification.

Claim 50 - the limitations and activities associated with claim 50 are described in FIG. 5A, reference number 206 and line 30, page 16 through line 2, page 17 of the specification. The activities comprise identifying an optimal mix of processes for the organization.

Claim 51 - The limitations associated with claim 51 are described in FIG. 6F, reference number 393, FIG. 9. and line 1, page 53 through line 22, page 53 of the June 5, 2007 amendment incorporating material from cross referenced applications.

Claim 52 - the limitations associated with claim 52 are described in line 11, page 6 through, line 10, page 7 and line 20, page 13 through line 22, page 16 of the specification.

Claim 53 - the limitations associated with claim 53 are described in line 11, page 6 through, line 10, page 7 and line 20, page 13 through line 22, page 16 of the specification.

Claim 54 - the limitations associated with claim 54 are described in FIG. 3, reference numbers

10, 15 and 30 and page 11, lines 6 through 17 of the specification.

Claim 55 - the limitations associated with claim 55 are described in FIG. 3, reference numbers 10, 15 and 30 and page 11, lines 6 through 17 of the specification.

Claim 56 - the limitations and activities associated with claim 56 are described in FIG 5B, reference number 223 and 224 and line 1, page 19 through line 33, page 19.

Claim 57 - the limitations associated with claim 57 are described in FIG. 6E, reference number 368, line 6, page 5 through line 8, page 5 and Table 1, page 15 of the specification and line 12, page 32 through line 20, page 34 of the June 5, 2007 amendment incorporating material from cross referenced applications.

Claim 58 - the limitations associated with claim 58 are described in line 3, page 5 through line 8, page 5 of the specification.

Independent Claim 59 - A second embodiment of the process optimization system is exemplified in independent, means plus function claim 59 where a machine prepares data from organization databases, external databases and the Internet for use in processing and use part of the prepared data to develop a model that identifies a contribution of one or more elements of value, one or more external factors and on or more risks to an organization value and risk by a segment of value. Process data are prepared in a similar manner and then combined with the organization model to allow simulation of the impact of a process on the financial performance of the organization and the identification of the optimal set of process features. Support for the specific steps contained in the claim can be found in the specification and drawings as detailed below:

a) *a plurality of systems related to a commercial enterprise* - as described in FIG. 1, reference numbers 6, 7, 8, 9, 30, 35 and 45 and line 1, page 2 through line 33, page 7 of the June 5, 2007 amendment incorporating material from cross referenced applications.

b) *means for preparing data from said systems for use in processing* - data related to a commercial organization are transformed by the computer system (100) is described in FIG. 3, reference numbers 100, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120 – 128 and 130 – 138 and line 7, page 14 through line 2, page 15 of the specification into an integrated database as described in FIG. 5A, reference numbers 201, 202, 203, 204, 206, 207, 208, 209, 210, 212 and 213, FIG. 5B, reference numbers 221, 222, 223, 224, 225, 227 and 232, FIG. 5C, reference numbers 228, 233 and 251 and line 21, page 16, through line 20, page 26 of the specification

and line 1, page 2 through line 33, page 7 of the June 5, 2007 amendment incorporating material from cross referenced applications.

c) *means for creating a computational model of organization financial performance that identifies a contribution to an organization value and an organization risk for each of one or more elements of value, external factors and risks for each of one or more segments of enterprise value* - the computer system (100) then transforms the data into a computational model of financial performance that identifies a contribution to an organization market value of one or more elements of value, external factor and risks by a segment of value by analyzing the data as described in FIG. 6C reference numbers 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353 and 354, FIG. 6D reference numbers 358, 361, 363, 364, 365, 366, 367, 368 and 369, FIG. 6E reference numbers 371, 372, 373, 374, 375, 376, 377, 378, 379 and 380, FIG. 6F reference numbers 383, 384, 385, 386, 387, 388, 389, 392, 393, 394 and 395, line 20, page 14 through line 2, page 55 of the June 5, 2007 amendment incorporating material from cross referenced applications.

d) *means for obtaining an organization related process specification that identifies one or more expected process outputs and a plurality of process feature data* - the computer system (100) also obtains a process specification, a plurality of process feature data and optionally identifies an impact of each feature on one or more expected process outputs as described in FIG. 5A, reference number 207, line 11, page 6 through, line 10, page 7 and line 20, page 13 through line 22, page 16 of the specification.

e) *means for storing and processing said computational model, specification and data* - the computer system (100) is described in FIG. 3, reference numbers 100, 110 – 118, 120 – 128 and 130 – 138 and line 7, page 14 through line 2, page 15 of the specification.

f) *means for optionally identifying an impact of each feature on one or more expected process outputs* - the process management database (30) normally identifies features used to achieve the different performance levels (see U.S. Patent Application 2002/0010571 for an example). Simulation programs such as MatLab, Simulink, SPICE, etc. can optionally be used to generate performance data for forecast changes in process operation by calculating overall external factor consumption for the process and/or by forecasting process performance using a new set of resources and/or features as described on line 5, page 14 through line 12, page 14 of the specification.

g) *means for mapping the expected process outputs to the computational model of organization financial performance* - the expected process outputs are then mapped to the model of financial performance as described in FIG 5A, reference number 207, line 11, page 6 through, line 10,

page 7 and line 20, page 13 through line 22, page 16 of the specification

h) means for creating a financial simulation model for the organization using said mappings, model and data - a financial simulation model is created using said mappings and data as described in FIG. 6A, reference numbers 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 311, FIG. 6B, reference numbers 321, 322, 323, 324, 325, 326, 327, 328, 329, 331, 333 and 335, line and 12, page 21 through line 15, page 29 of the specification.

i) means for determining an optimal mix of process features using said simulation model - the simulation model is used to determine an optimal mix of process features as described in FIG. 6A, reference numbers 301, 311, FIG. 6B, reference numbers 321 – 329, 331, 333 and 335, line and 12, page 21 through line 15, page 29 of the specification.

j) means for displaying the optimal mix using a paper document or an electronic display - as described in FIG. 7 and FIG. 8, reference numbers 402 and 403, FIG. 9 and line 1, page 30 through line 3, page 32 of the specification.

Claim 60 - the limitations associated with claim 60 are described in FIG. 8, reference number 403, FIG. 9, and line 9, page 31 through line 13, page 31 of the specification.

Claim 61 - the limitations associated with claim 61 are described in FIG. 5A, reference number 206 and line 30, page 16 through line 2, page 17 of the specification.

Claim 62 - the limitations associated with claim 62 are described in FIG. 6F, reference number 393, FIG. 9. and line 1, page 53 through line 22, page 53 of the June 5, 2007 amendment incorporating material from cross referenced applications.

Claim 63 - the limitations associated with claim 63 are described in line 11, page 6 through, line 10, page 7 and line 20, page 13 through line 22, page 16 of the specification.

Claim 64 - the limitations associated with claim 64 are described in line 11, page 6 through, line 10, page 7 and line 20, page 13 through line 22, page 16 of the specification.

Claim 65 - the limitations associated with claim 65 are described in FIG. 3, reference numbers 10, 15 and 30 and page 11, lines 6 through 17 of the specification.

Claim 66 - the limitations associated with claim 66 are described in FIG. 3, reference numbers 10, 15 and 30 and page 11, lines 6 through 17 of the specification.

Claim 67 - the limitations and activities associated with claim 67 are described in FIG 5B, reference number 223 and 224 and line 1, page 19 through line 33, page 19.

Claim 68 - the limitations associated with claim 68 are described in FIG. 6E, reference number

368, line 3, page 5 through line 8, page 5 and Table 1, page 15 of the specification and line 12, page 32 through line 20, page 34 of the June 5, 2007 amendment incorporating material from cross referenced applications.

6. Grounds of rejection to be reviewed on appeal

Issue 1 – Whether claim 48, claim 49, claim 50, claim 51, claim 52, claim 53, claim 54, claim 55, claim 56, claim 57, claim 58, claim 59, claim 60, claim 61, claim 62, claim 63, claim 64, claim 65, claim 66, claim 67 and claim 68 are indefinite under 35 U.S.C. 112 second paragraph.

Issue 2 – Whether claim 48, claim 49, claim 50, claim 51, claim 52, claim 53, claim 54, claim 55, claim 56, claim 57, claim 58, claim 59, claim 60, claim 61, claim 62, claim 63, claim 64, claim 65, claim 66, claim 67 and claim 68 are enabled under 35 U.S.C. 112 first paragraph.

7. The Argument

For each ground of rejection which Appellant contests herein which applies to more than one claim, such additional claims, to the extent separately identified and argued below, do not stand and fall together.

Issue 1 – Whether claim 48, claim 49, claim 50, claim 51, claim 52, claim 53, claim 54, claim 55, claim 56, claim 57, claim 58, claim 59, claim 60, claim 61, claim 62, claim 63, claim 64, claim 65, claim 66, claim 67 and claim 68 are indefinite under 35 U.S.C. 112 second paragraph?

The claims are patentable because the claim rejections are based on a number of errors in the facts and in the law. Because of these errors, the arguments presented by the Examiner fail to establish a *prima facie* case of claim indefiniteness for every rejected claim as detailed below.

Errors 1 through 105 – It is well established that: *the definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent. See, e.g., Solomon v. Kimberly-Clark Corp., 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). See also In re Larsen, No. 01-1092 (Fed. Cir. May 9, 2001).* Errors in the claim rejections caused by the apparent failure to establish a *prima facie*

case of claim indefiniteness include:

Errors #1 through #21 – Is a failure to acknowledge that a good portion of the alleged uncertainty associated with rejected claim 48 (#1), claim 49 (#2), claim 50 (#3), claim 51 (#4), claim 52 (#5), claim 53 (#6), claim 54 (#7), claim 55 (#8), claim 56 (#9), claim 57 (#10), claim 58 (#11), claim 59 (#12), claim 60 (#13), claim 61 (#14), claim 62 (#15), claim 63 (#16), claim 64 (#17), claim 65 (#18), claim 66 (#19), claim 67 (#20) and claim 68 (#21) is a product of the Examiner’s apparent lack of understanding of the scientific and engineering principles associated with the pertinent arts. As shown in the table below, nine (9) of the alleged areas of uncertainty simply have nothing to do with the claimed invention (see Evidence Appendix, pages 36 - 40).

Alleged uncertainty regarding:	Traversal includes
A contribution to an organization value and an organization risk for each of one or more elements of value (1), external factors (2) and risks (3) for process outputs	A simple examination of the claims shows that they do not contain any reference to identifying a contribution for process outputs
A contribution to an organization value and an organization risk for each of one or more elements of value (4), external factors (5) and risks (6) for process features data	A simple examination of the claims shows that they do not contain any reference to identifying a contribution for process features data
A contribution to an organization value and an organization risk for each of one or more elements of value (7), external factors (8) and risks (9) for transactional data	A simple examination of the claims shows that they do not contain any reference to identifying a contribution for transactional data

Errors #22 through #42 – Is a failure to acknowledge that no evidence has been provided to indicate that rejected: claim 48 (#22), claim 49 (#23), claim 50 (#24), claim 51 (#25), claim 52 (#26), claim 53 (#27), claim 54 (#28), claim 55 (#29), claim 56 (#30), claim 57 (#31), claim 58 (#32), claim 59 (#33), claim 60 (#34), claim 61 (#35), claim 62 (#36), claim 63 (#37), claim 64 (#38), claim 65 (#39), claim 66 (#40), claim 67 (#41) and claim 68 (#42) do not *particularly point out or distinctly claim the disclosed invention to someone of*

average skill in the art. In particular, all the claim rejections are based on conclusory statements. Furthermore, there is substantial evidence that the conclusory statements were authored and approved by individuals who do not appear to have the requisite level of skill in the relevant arts. For example, as detailed below, the Examiner apparently does not understand the scientific and engineering principles associated with predictive models and appears to believe that using data to define the parameters of simulation for a predictive model somehow magically transforms the output of the model (see Evidence Appendix, pages 36 - 40 and errors 1 through 21).

Errors #43 through #63 - Is a failure to acknowledge that "*there is no requirement that the words in the claim must match those used in the specification disclosure,*" and "*Obviously, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite.*" MPEP §2173.02 states: "*Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire.*" (see *In re Robert Skvorecz*, CAFC 2008-1221). Furthermore, there was and is a related failure to acknowledge that rejected: claim 48 (#43), claim 49 (#44), claim 50 (#45), claim 51 (#46), claim 52 (#47), claim 53 (#48), claim 54 (#49), claim 55 (#50), claim 56 (#51), claim 57 (#52), claim 58 (#53), claim 59 (#54), claim 60 (#55), claim 61 (#56), claim 62 (#57), claim 63 (#58), claim 64 (#59), claim 65 (#60), claim 66 (#61), claim 67 (#62) and claim 68 (#63) do not contain any terms that do not have proper antecedent basis where such basis is not otherwise present by implication or the meaning is not reasonably ascertainable (*Halliburton Energy Services, Inc. v. M-I LLC*, 514 F.3d 1244, 1255, 85 USPQ2d 1663 (Fed. Cir. 2008) and *Halliburton*, 514 F.3d at 1246, 85 USPQ2d at 1658 (Citing *Biomedino, LLC v. Waters Techs. Corp.*, 490 F.3d 946, 950 (Fed. Cir, 2007)).

Errors #64 through #84 – Is a failure to acknowledge that the Examiner has failed to establish a *prima facie* case of indefiniteness by failing to consider the rejected: claim 48 (#64), claim 49 (#65), claim 50 (#66), claim 51 (#67), claim 52 (#68), claim 53 (#69), claim 54 (#70), claim 55 (#71), claim 56 (#72), claim 57 (#73), claim 58 (#74), claim 59 (#75), claim 60 (#76), claim 61 (#77), claim 62 (#78), claim 63 (#79), claim 64 (#80), claim 65 (#81), claim 66 (#83), claim 67 (#83) and claim 68 (#84) as a whole. The complete claims each provide additional context that helps define the metes and bounds of the inventions to someone of average skill in the relevant arts.

Errors #85 through #105) - Is a failure to acknowledge that virtually all of the terms used in rejected: claim 48 (#85), claim 49 (#86), claim 50 (#87), claim 51 (#88), claim 52 (#89), claim 53 (#90), claim 54 (#91), claim 55 (#92), claim 56 (#93), claim 57 (#94), claim 58 (#95), claim 59 (#96), claim 60 (#97), claim 61 (#98), claim 62 (#99), claim 63 (#100), claim 64 (#101), claim 65 (#102), claim 66 (#103), claim 67 (#104) and claim 68 (#105) have well recognized meanings which allows the reader to infer the meaning of the entire phrase with reasonable confidence (see *Bancorp Services, L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1372, 69 USPQ2d 1996, 1999-2000 (Fed. Cir. 2004). Furthermore, there was and is a related failure to acknowledge that in cases where a specific meaning was given to a term, the specification defined the meaning of the term as discussed below:

Claim 51 – the term “organization value” is defined as the sum of the value of all the segments of value in the organization (current operation, derivatives, excess financial assets, market sentiment and/or real options) selected for inclusion by the user and “organization risk” is defined as the sum of the identified risks (contingent liabilities, event risks, variability risks and market volatility).

Claim 58 – the specific meaning given to the terms: alliances, brands, channels, customers, employees, equipment, knowledge, information technology, intellectual property, investors, partnerships, processes, production equipment, quality, vendors, supply chains and visitors is determined by the user and the systems the organization has in place (see Issue 2, error x for more detail). Furthermore, as detailed in the specification, element of value combination are handled in an automated manner.

Claims 58 and 68: the meaning of the segments of value including: “excess financial assets” and “market sentiment” is specifically defined in the specification.

Claim 68 – the specification specifically identifies how contingent liabilities, event risks and variability risks are measured. It also identifies how normal and extreme scenarios are developed.

Errors 106 and 107 – The claim rejections are based on 35 U.S.C. §112 second paragraph which states: *The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.* Errors in the claim rejections caused by the apparent failure to meet any of the statutory requirements for an indefinite claim rejection include:

Error #106) Failure to acknowledge the fact that the rejected claims meet the

requirements of 35 U.S.C. §112 second paragraph. As illustrated by the preceding discussion of errors 1 through 105, the enablement rejection appears to be based on an unknown and non-existent standard for claim definiteness.

Error #107) Failure to acknowledge the fact that the claim rejections have been authored by individuals who appear to lack the level of skill in the art required to author such rejections. It is well established that the “*hypothetical ‘person having ordinary skill in the art’ to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and engineering principles applicable to the pertinent art*” *Ex parte Hiyamizu*, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Inter. 1988). It is unlikely that anyone who understood the scientific and engineering principles applicable to the pertinent art would ever suggest that the claims were indefinite for failing to describe a contribution of project feature data. Another indication of the apparent lack of understanding of the scientific and engineering principles applicable to the pertinent art is the request under 37 CFR 1.105 to identify the relevant references from a list of previously reviewed references. This appears to be an explicit acknowledgement that the Examiner does not have sufficient background in the relevant arts to identify relevant prior art. It may also be an indication that

Errors 108 and 109 – In *Dickinson v. Zurko*, 119 S. Ct. 1816, 50 USPQ2d 1930 (1999), the Supreme Court held that the appropriate standard of review of U.S.P.T.O. findings are the standards set forth in the Administrative Procedure Act (“APA”) at 5 U.S.C. 706 (1994). The APA provides two standards for review – an arbitrary and capricious standard and a substantial evidence standard. Errors in the claim rejections caused by the apparent failure to meet any of the requirements of the APA include:

Error #108) Failure to acknowledge the fact that the claim rejections fail under the substantial evidence standard. Errors 1 through error 107 clearly show that the relevant Office Action fails to provide even a scintilla of evidence to support the rejections for indefiniteness for claim 48, claim 49, claim 50, claim 51, claim 52, claim 53, claim 54, claim 55, claim 56, claim 57, claim 58, claim 59, claim 60, claim 61, claim 62, claim 63, claim 64, claim 65, claim 66, claim 67 and claim 68 and that as a result the rejections fail to meet the substantial evidence standard.

Error #109) Failure to acknowledge the fact that the claim rejections fail under the arbitrary and capricious standard. The Appellant respectfully submits that the rejection of claim 48, claim 49, claim 50, claim 51, claim 52, claim 53, claim 54, claim 55, claim 56,

claim 57, claim 58, claim 59, claim 60, claim 61, claim 62, claim 63, claim 64, claim 65, claim 66, claim 67 and claim 68 for indefiniteness also fails to pass the arbitrary and capricious test for a number of reasons including the fact that:

- a) as detailed above under errors 1 through 100, there is no evidence that the claims are indefinite;
- b) there is no rational connection between the statutory requirements for claim definiteness, the agency fact findings and the rejection of the claims (see errors 101 and 102),
- c) there is no rational connection between the rejection for claim indefiniteness and the prior agency fact findings associated with U.S. Patent 7,283,982,
- d) there is no rational connection between the apparent allowance of claim 35, claim 36, claim 37, claim 38, claim 39, claim 40, claim 41, claim 42, claim 43, claim 44, claim 45, claim 46 and claim 47 and the rejection of the listed claims for indefiniteness, and
- e) prior agency fact-findings have shown that 35 U.S.C. 112 requirements for written description are apparently not always considered during the prosecution and allowance of large company patent applications (i.e. U.S. Patent 7,395,236). This apparently unequal application of the law comprises an apparent violation of 35 USC 3.

Because the claim rejections do not meet either standard of the APA, the *prima facie* case of claim indefiniteness cannot be properly established.

Summarizing the above, the Appellant respectfully submits that the Examiner has failed to produce the evidence required to satisfy the requirements of the APA and/or establish a *prima facie* case that a single claim is indefinite.

Issue 2 – Whether claim 48, claim 49, claim 50, claim 51, claim 52, claim 53, claim 54, claim 55, claim 56, claim 57, claim 58, claim 59, claim 60, claim 61, claim 62, claim 63, claim 64, claim 65, claim 66, claim 67 and claim 68 are enabled under 35 U.S.C. 112 first paragraph?

The claims are patentable because the claim rejections are based on a number of errors in the facts and in the law. Because of these errors, the arguments presented by the Examiner fail to establish a *prima facie* case of a lack of enablement for every rejected claim as detailed below.

Errors 1 through 105 - It is well established that “*a description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption*. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to

challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97. In rejecting a claim, the examiner must set forth express findings of fact regarding the above analysis which support the lack of written description conclusion. These findings should: (A) Identify the claim limitation at issue; and (B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of "unpredictability in the art" is not a sufficient reason to support a rejection for lack of adequate written description." Furthermore, it is well established that "the test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation." *United States v. Telecommunications, Inc.*, 857 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir. 1988). This has been the primary test of enablement since 1916 (see *Mineral Separation v. Hyde*, 242 U.S. 261, 270 (1916)). The determination that "undue experimentation" would have been needed to make and use the claimed invention is not a single, simple factual determination (*In re Wands*, 858 F.2d 731, 8 USPQ2d 1400 (Fed. Cir. 1988)). Factors which need to be considered include: the nature of the invention, the state of the prior art, the predictability or lack thereof in the art, the amount of direction or guidance present, the presence or absence of working examples, the breadth of the claims, the relative skill of those in the art and the quantity of experimentation needed (hereinafter referred to as the Wands factors). A conclusion of lack of enablement means that, based on the evidence regarding each of the above factors (the Wands factors), the specification, at the time the application was filed, would not have taught one skilled in the art how to make and/or use the full scope of the claimed invention without undue experimentation (*In re Wright*, 999 F.2d 1557, 1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993)). Errors in the claim rejections caused by the apparent failure to establish a *prima facie* case of a lack of enablement include:

Errors #1 through #21) – Is a failure to acknowledge that a good portion of the alleged lack of enablement associated with rejected claim 48 (#1), claim 49 (#2), claim 50 (#3), claim 51 (#4), claim 52 (#5), claim 53 (#6), claim 54 (#7), claim 55 (#8), claim 56 (#9), claim 57 (#10), claim 58 (#11), claim 59 (#12), claim 60 (#13), claim 61 (#14), claim 62 (#15), claim 63 (#16), claim 64 (#17), claim 65 (#18), claim 66 (#19), claim 67 (#20) and claim 68 (#21) is a product of the Examiner's apparent lack of understanding of the scientific and engineering principles associated with the pertinent arts. As detailed below,

a number of the alleged areas of deficiency in the independent claims (48 and 59) simply do not exist (see Evidence Appendix, pages 36 - 40), including:

a) Allegedly unsupported limitation - *A contribution to an organization value and an organization risk for each of one or more elements of value, external factors and risks for process features data.*

Traversal: A simple examination of the claim and the specification shows that neither contain any references to identifying a contribution of process features data to organization value or risk (see Evidence Appendix, pages 36 - 40).

b) Allegedly unsupported limitation - *A contribution to an organization value and an organization risk for each of one or more elements of value and external factors for transactional data,*

Traversal: A simple examination of the claim and the specification shows that neither contain any reference to identifying a contribution for transactional data to organization value or risk (see Evidence Appendix, pages 36 - 40).

c) Allegedly unsupported limitation: *a contribution to an organization value and an organization risk for each of one or more elements of value, external factors and risks for process outputs,*

Traversal: A simple examination of the claim and the specification shows that neither contain any references to identifying a contribution for process outputs. Process outputs are mapped to the model of organization financial performance (see Evidence Appendix, pages 36 - 40).

Errors #22 through #42) – Is a failure to acknowledge that a good portion of the alleged lack of enablement associated with rejected: claim 48 (#22), claim 49 (#23), claim 50 (#24), claim 51 (#25), claim 52 (#26), claim 53 (#27), claim 54 (#28), claim 55 (#29), claim 56 (#30), claim 57 (#31), claim 58 (#32) , claim 59 (#33), claim 60 (#34), claim 61 (#35), claim 62 (#36), claim 63 (#37), claim 64 (#38), claim 65 (#39), claim 66 (#40), claim 67 (#41) and claim 68 (#42) is a product of the Examiner's apparent lack of understanding of the relevant rules and statutes. The instant application incorporated a number of applications by reference. In accordance with the relevant rules, the proper response to the identification of an allegedly unsupported claim limitation would be to first require that pertinent material from the cross referenced patent applications be added to the specification instead of issuing an arbitrary and capricious rejection for a lack of enablement (see MPEP 608.01(p) and MPEP 2163.07(b) for details re: U.S.P.T.O. policy

in this regard).

Errors #43 through #63) – Is a failure to acknowledge that no evidence has been presented to support the rejection of claim 48 (#43), claim 49 (#44), claim 50 (#45), claim 51 (#46), claim 52 (#47), claim 53 (#48), claim 54 (#49), claim 55 (#50), claim 56 (#51), claim 57 (#52), claim 58 (#53) , claim 59 (#54), claim 60 (#55), claim 61 (#56), claim 62 (#57), claim 63 (#58), claim 64 (#59), claim 65 (#60), claim 66 (#61), claim 67 (#62) and claim 68 (#63). As noted above, rejection under §112 first paragraph requires a preponderance of evidence and express findings of fact. In spite of this well known requirement, no facts have been identified and no evidence has been presented that excessive experimentation would be required and/or that the full scope of the claimed invention has not been described. In place of facts and evidence, the Examiner has relied on conclusory statements.

Errors #64 through #84) - Is a failure to acknowledge that the Wands factors have not been considered for claim 48 (#64), claim 49 (#65), claim 50 (#66), claim 51 (#67), claim 52 (#68), claim 53 (#69), claim 54 (#70), claim 55 (#71), claim 56 (#72), claim 57 (#73), claim 58 (#74) , claim 59 (#75), claim 60 (#76), claim 61 (#77), claim 62 (#78), claim 63 (#79), claim 64 (#80), claim 65 (#81), claim 66 (#83), claim 67 (#83) and claim 68 (#84). As noted above, rejection under §112 first paragraph requires a consideration of the Wands factors. In spite of this well known requirement, the Examiner has not completed a single aspect of the required Wands factor analysis.

Errors #85 through #105) - Is a failure to acknowledge that the conclusory statements used to support the rejection of claim 48 (#85), claim 49 (#86), claim 50 (#87), claim 51 (#88), claim 52 (#89), claim 53 (#90), claim 54 (#91), claim 55 (#92), claim 56 (#93), claim 57 (#94), claim 58 (#95) , claim 59 (#96), claim 60 (#97), claim 61 (#98), claim 62 (#99), claim 63 (#100), claim 64 (#101), claim 65 (#102), claim 66 (#103), claim 67 (#104) and claim 68 (#105) were incorrect. Incorrect conclusory statements include those made in relationship to the claims discussed below, including:

Claim 48 (affects claims 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58). As discussed under errors 1 through 21, the limitations that are allegedly not enabled were not claimed.

Claim 49. - Using the model of claim 48 to identify the mix of processes that will optimize the financial performance of the process owner would require little or no experimentation (see Evidence Appendix, pages 36 - 40).

Claims 50, 52, 53, 55, 56 and 57 - the Examiner has not alleged that there is a lack of enablement associated with any of these claims.

Claim 51 - The analysis section of the specification (FIG. 6A, reference numbers 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 311, FIG. 6B, reference numbers 321, 322, 323, 324, 325, 326, 327, 328, 329, 331, 333 and 335, line and 12, page 21 through line 15, page 29 of the specification) describes the use of the model of claim 48 to optimize value, risk and combinations thereof using multi criteria optimization. (see Evidence Appendix, pages 36 - 40).

Claim 54 – there is no activity associated with claim 54 that needs to be enabled. The claim only describes the different types of data that may be contained in a process specification.

Claim 58 – The user identifies the segments of value and elements of value in the system settings. The specification further describes the fact that each element of value is defined by the information management system that tracks the element of value as shown in the table below. Furthermore, as detailed in the specification, combinations are created automatically thereof.

(Soft) Asset Management Systems	Element of value
alliance management systems,	Alliances
brand management systems	Brands
capital asset system	Equipment
channel management systems	Channels
customer relationship management systems,	Customers
human resource management systems and workforce management systems	Employees
IT management systems	Information Technology
intellectual property management systems,	Intellectual Property
investor management systems	Investors
knowledge management systems	Knowledge
partner relationship management systems	Partnerships
process management systems	Processes
quality management systems	Quality
supply chain management system	Supply Chain
vendor management systems	Vendors
visitor relationship management systems	Visitors

Claim 59 (affects claims 60, 61, 62, 63, 64, 65, 66, 67 and 68) - As discussed under errors 1 through 21, many of the limitations that were allegedly not enabled were not claimed. Other errors include:

a) Allegedly unsupported limitation - means for storing and processing a computational model, specification and data,

Traversal: the computer system (100) that stores and processes a computational model, specification and data is described in FIG. 3, reference numbers 100, 110 – 118, 120 – 128 and 130 – 138 and line 6, page 11 through line 5, page 13 of the specification (see Evidence Appendix, pages 36 - 40).

b) Allegedly unsupported limitation: means for mapping the expected process outputs to a computational model of organization financial performance,

Traversal: The software in block 207 prompts the user (20) via the process to matrix mapping window (904) to define the relationship between process outputs and the matrices of value and risk for the owner. This mapping will identify the categories, components and/or element of value and/or the external factors that are affected by the process outputs (see Evidence Appendix, pages 36 - 40).

c) Allegedly unsupported limitation: means for creating a financial simulation model for the organization using said mappings, model and data,

Traversal: The analysis section of the specification (FIG. 6A, reference numbers 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 311, FIG. 6B, reference numbers 321, 322, 323, 324, 325, 326, 327, 328, 329, 331, 333 and 335, line and 12, page 21 through line 15, page 29 of the specification) describes the development of the simulation model used for analysis (see Evidence Appendix, pages 36 - 40).

The optional step of identifying an impact of each feature on one or more expected process outputs is also fully described (see Evidence Appendix, pages 36 - 40).

Claims 60, 61, 62, 63, 64, 65, 66 and 67 - the Examiner has not alleged that that there is a lack of enablement associated with any of these claims.

Claim 68 - as mentioned previously, the user identifies the segments of value, the calculation of contingent liabilities is described in FIG 6D, reference number 368 and line 10, page 32 through line 20, page 34 of the June 5, 2007 amendment incorporating material from cross referenced applications. The calculation of the remaining risks is explained in the analysis section (FIG. 6A, reference numbers 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 311, FIG. 6B, reference numbers 321, 322, 323, 324, 325, 326, 327, 328, 329, 331, 333 and 335, line and 12, page 21 through line 15, page 29 of the specification).

Since the *prima facie* case to support the claim rejections has not been established, no rebuttal was (or is) required.

Errors 106 and 107 – The claim rejections are based on 35 U.S.C. §112 first paragraph which states: *The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.* Errors in the claim rejections caused by the apparent failure to meet any of the statutory requirements for an enablement rejection include:

Error #106) Failure to acknowledge the fact that the specification meets the requirements of 35 U.S.C. §112 first paragraph. As illustrated by the preceding discussion of errors 1 through 105, the enablement rejection appears to be based of a non-existent standard for written description enablement.

Error #107) Failure to acknowledge the fact that the claim rejections have been authored by individuals who appear to lack the level of skill in the art required to author such rejections. It is well established that the “*hypothetical ‘person having ordinary skill in the art’ to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and engineering principles applicable to the pertinent art*” *Ex parte Hiyamizu*, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Inter. 1988). It is unlikely that anyone who understood the scientific and engineering principles applicable to the pertinent art would ever suggest Sandretto, Jost and/or Barr as a reference in support of an obviousness rejection for the claimed inventions for the reasons described previously under Issue 1, Issue 2 and Issue 3. As noted previously, many of the several hundred errors identified in the claim rejections appear to be based on a basic misunderstanding regarding the teachings of the Sandretto and Jost documents that may be another indication of the lack of understanding of the scientific and engineering principles applicable to the pertinent art.

Errors 108 and 109 – In *Dickinson v. Zurko*, 119 S. Ct. 1816, 50 USPQ2d 1930 (1999), the Supreme Court held that the appropriate standard of review of U.S.P.T.O. findings are the standards set forth in the Administrative Procedure Act (“APA”) at 5 U.S.C. 706 (1994). The APA provides two standards for review – an arbitrary and capricious standard and a substantial evidence standard. Errors in the claim rejections caused by the apparent failure to meet any of the requirements of the APA include:

Error #108) Failure to acknowledge the fact that the claim rejections fail under the substantial evidence standard. Errors 1 through 107 clearly show that the relevant Office Action fails to provide even a scintilla of evidence to support the lack of enablement rejections of all rejected claims and that as a result the rejections fail to meet the substantial evidence standard.

Error #109) Failure to acknowledge the fact that the claim rejections fail under the arbitrary and capricious standard. The Appellant respectfully submits that the enablement rejection of claim 48, claim 49, claim 50, claim 51, claim 52, claim 53, claim 54, claim 55, claim 56, claim 57, claim 58, claim 59, claim 60, claim 61, claim 62, claim 63, claim 64, claim 65, claim 66, claim 67 and claim 68 also fails to pass the arbitrary and capricious test for a number of reasons including the fact that:

- a) as detailed above under errors 1 through 105, the evidence clearly shows that there is no evidence to support the rejection of a single claim;
- b) there is no rational connection between the statutory requirements for enablement, the agency fact findings and the rejection of the claims (see errors 106 and 107),
- c) there is no rational connection between the rejection for enablement and the prior agency fact findings associated with U.S. Patent 7,395,236,
- d) there is no rational connection between the apparent allowance of claim 35, claim 36, claim 37, claim 38, claim 39, claim 40, claim 41, claim 42, claim 43, claim 44, claim 45, claim 46 and claim 47 and the rejection of the listed claims for a lack of enablement, and
- e) prior agency fact-findings have shown that 35 U.S.C. 112 first paragraph requirements for enablement are apparently not always considered during the prosecution and allowance of large company patent applications (i.e. U.S. Patent 7,395,236). This apparently unequal application of the law comprises an apparent violation of 35 USC 3.

Because the claim rejections do not meet either standard of the APA, the *prima facie* case of a lack of enablement cannot be properly established.

Summarizing the above, the Appellant respectfully submits that the Examiner has failed to produce the evidence required to satisfy the requirements of the APA and/or establish a *prima facie* case that a single claim is not enabled.

8. Conclusion

The Appellant notes that with respect to the prosecution of the instant application, it appears that the U.S.P.T.O. has not fully complied with the requirements set forth in the APA, 35 U.S.C. 3 and 35 U.S.C. 131. A valid patent application rejection requires substantial evidence (Gartside, 203 F.3d at 1312). As described in the preceding section, the February 20, 2009 Office Action does not contain any evidence that would support the rejection of a single claim. However, related appeals and the February 20, 2009 Office Action for the instant application do provide substantial evidence that: those authoring/signing the Office Action do not appear to understand any of the scientific and/or engineering principles applicable to the pertinent art, those authoring the Office Action do not adhere to any of the well established statutory requirements for authoring valid claim rejections, and that those authoring the Office Action appear to have based the claim rejections on the application legal standards that are not applied during the review and allowance of similar applications filed by larger companies.

For the reasons detailed above, the Appellant respectfully but forcefully contends that each claim is patentable. Therefore, reversal of all rejections is courteously solicited.

Respectfully submitted,
Asset Trust, Inc.

/B.J. Bennett/

B.J. Bennett, President
Dated: September 21, 2009

9. Claims Appendix

48. A program storage device readable by a computer, tangibly embodying a program of instructions executable by at least one computer to perform an optimization method, comprising:

- preparing data related to a commercial enterprise for use in processing,
- transforming the data into a computational model of organization financial performance that identifies a contribution to an organization value and an organization risk for each of one or more elements of value, external factors and risks for each of one or more segments of enterprise value,
- obtaining a process specification that identifies one or more expected process outputs, a plurality of organization related transaction data and a plurality of process feature data, optionally identifying an impact of each process feature on the expected process outputs;
- mapping the expected process outputs to the computational model of organization financial performance;
- creating a financial simulation model for the organization using said mappings, model and process data;
- determining an optimal mix of process features using said simulation model, and displaying the result using a paper document or an electronic display

where the computational model of financial performance optionally produces two or more reports detailing organization market value and risk by element of value, external factor and risk for each of one or more segments of enterprise value in a matrix format.

49. The program storage device of claim 48 where an organization is a single product, a group of products, a division, a company, a multi-company corporation, a value chain or a collaborative multi-enterprise operation.

50. The program storage device of claim 48 where the method further comprises identifying an optimal mix of processes for an organization.

51. The program storage device of claim 48 where an optimal mix of process features is a mix that achieves financial goals selected from the group consisting of maximize organization value, minimize organization risk and combinations thereof.

52. The program storage device of claim 48 where a plurality of process feature data encapsulate the different options the process manager has for using the resources required to produce the process outputs.

53. The program storage device of claim 48 where a plurality of process feature data identifies any options for implementing a process or a process feature at a future date.

54. The program storage device of claim 48 where a plurality of process specification data further comprises data selected from the group consisting of design data, financial data, operating factor data, commodity prices and combinations thereof.

55. The program storage device of claim 48 where a plurality of process specification data and feature data are obtained from databases selected from the group consisting of a design system database, a process financial system database, an operating factor database and combinations thereof.

56. The program storage device of claim 48 where process simulation system data are optionally used to support method steps selected from the group consisting of identifying an impact of one or more process features on one or more process outputs, identifying an impact

of one or more process outputs on a computational model of financial performance and combinations thereof.

57. The program storage device of claim 48 where organization risks are selected from the group consisting of variability risks, market volatility risks, contingent liabilities, event risks, extreme risks, normal risks and combinations thereof.

58. The program storage device of claim 48 where the one or more elements of value are selected from the group consisting of alliances, brands, channels, customers, employees, equipment, knowledge, information technology, intellectual property, investors, partnerships, processes, production equipment, quality, vendors, supply chains, visitors and combinations thereof and where the one or more organization segments of value are selected from the group consisting of current operation, real option, derivatives, excess financial assets, market sentiment and combinations thereof.

59. A process optimization apparatus, comprising:

a plurality of systems related to a commercial enterprise,

means for preparing data from said systems for use in processing,

means for creating a computational model of organization financial performance that identifies a contribution to an organization value and an organization risk for each of one or more elements of value, external factors and risks for each of one or more segments of enterprise value,

means for obtaining an organization related process specification that identifies one or more expected process outputs and a plurality of process feature data,

means for storing and processing said computational model, specification and data,

means for optionally identifying an impact of each feature on one or more expected process outputs;

means for mapping the expected process outputs to the computational model of organization financial performance;

means for creating a financial simulation model for the organization using said mappings, model and data;

means for determining an optimal mix of process features using said simulation model, and

means for displaying the optimal mix using a paper document or an electronic display

where the computational model of financial performance optionally produces two or more reports detailing organization market value and risk by element of value, external factor and risk for each of one or more segments of enterprise value in a matrix format.

60. The apparatus of claim 59 that optionally displays an impact of the optimized feature mix on a position of the organization relative to an efficient frontier.

61. The apparatus of claim 59 that further comprises identifying an optimal mix of processes for the organization.

62. The apparatus of claim 59 where an optimal mix is the mix that maximizes organization value while minimizing organization risk.

63. The apparatus of claim 59 where a plurality of process feature data encapsulate the different options the process manager has for using the resources required to produce the process outputs.

64. The apparatus of claim 59 where a plurality of process feature data identifies any options for implementing a process feature at a future date .

65. The apparatus of claim 59 where a process specification further comprises data selected from the group consisting of design data, financial data, operating factor data, commodity prices and combinations thereof.

66. The apparatus of claim 59 where a process specification and a plurality of feature data are obtained from databases selected from the group consisting of a design system database, a process financial system database, an operating factor database and combinations thereof.

67. The apparatus of claim 59 where process simulation system data are optionally used to support method steps selected from the group consisting of identifying an impact of one or more process features on one or more process outputs, identifying an impact of one or more process outputs on a matrix of value, identifying an impact of one or more process outputs on a matrix of risk and combinations thereof.

68. The apparatus of claim 67 where an organization matrix of risk is defined by one or more organization segments of value and one or more organization related risks where the segments of value are selected from the group consisting of current operation, real option, derivative, excess financial asset, market sentiment and combinations thereof and where the organization risks are selected from the group consisting of variability risks, market volatility risks, contingent liabilities, event risks, and combinations thereof under a normal scenario, an extreme scenario or a combination thereof.

10. Evidence Appendix

Pages 29 – 34 Declaration under Rule 132 submitted July 21, 2008

Pages 35 – 39 Declaration under Rule 132 submitted September 18, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/821,504

Applicant: Jeff S. Eder

Filed: December 23, 2002

Examiner: Sigfried Chencinski

Art Unit: 3692

Docket No.: AR - 65

Customer No: 53787

DECLARATION UNDER RULE 132

I, Rick Rauenzahn, do hereby declare and say:

My home address is 529 Calle don Leandro, Espanola, New Mexico. I have a B.S. degree in chemical engineering from Lehigh University, an S.M. degree in chemical engineering from The Massachusetts Institute of Technology and a Ph.D. in chemical engineering from The Massachusetts Institute of Technology. I have worked in the mathematical modeling field for 25 years concentrating in the disciplines of fluid mechanics, turbulence modeling, numerical methods for partial differential equations, radiation hydrodynamics, and strength of materials. I also have extensive knowledge of computer system administration, particularly for Windows-based, Linux, and UNIX systems. I have been employed by Los Alamos National Laboratory and Molten Metal Technologies for the past 24 years.

I further declare that I do not have any direct affiliation with the application owner, Asset Reliance, Inc. or with its licensee Kantrak, Inc. As described in prior declarations I have met the inventor who is the President of Kantrak.

On April 22, 2006, I was given a copy of U.S. Patent Application 09/688,983

entitled "An automated risk transfer system" filed in the United States Patent Office on October 17, 2000. Until that time I had not read the patent application. U.S. Patent Application 10/821,504 entitled "A Business Activity Management System" is a continuation of application 09/688,983 and as such has the same specification and drawings. I have studied the entire specification in order to closely analyze the claims and drawings. I am totally familiar with the language of the claims and conversant with the scope thereof. I completely understand the invention as claimed.

On June 25, 2008 I was provided with a copy of U.S. Patent Application 2001/0053991 by Eric W. Bonabeau (hereinafter Bonabeau). Until that time I had not read the patent application and I have not discussed it with anyone. Bonabeau describes aspects of developing market space ecosystem models that apparently have utility in selecting business models for a commercial enterprise that will optimize a metric (abstract, paragraph 13). Business models identify a combination of features (VP), prices (RM) and operational methods (OA) used in producing existing and planned offerings for a business (paragraph 23). Bonabeau also mentions but does not explain that if a stock market system is included in the market space model, then the metric being optimized may be able to include market capitalization (paragraph 11, paragraph 86).

Based on my experience and training in the field of mathematical modeling and electronic data processing, I have concluded that the Bonabeau system does not have any relevance to the system and method disclosed in application 09/688,983/10/821,504. There are several reasons for this:

1) the method disclosed in 09/688,983/10/821,504 for optimizing activities for a commercial enterprise by analyzing a model of enterprise value and risk teaches and relies on the use of different valuation methods for existing offerings (cash flow), planned offerings (real options for growth) and market sentiment. Bonabeau teaches away from this approach as it requires the use of a single category of metric to evaluate the performance of both existing and planned offerings (paragraph 13). Bonabeau does not teach or suggest anything about

market sentiment and cannot support its analysis or optimization (see item 8 for more detail).

2) the method disclosed in 09/688,983/10/821,504 for optimizing activities for a commercial enterprise by analyzing a model of enterprise value and risk teaches and relies on the fact that the levels of the components of current operation value (revenue, expense and capital change) and market sentiment are a function of the performance of a plurality of elements of value (i.e. brands, customers, employees, etc.) and/or a plurality of market value factors. In particular, the method disclosed in 09/688,983/10/821,504 relies on the development of summaries of element of value and market value factor performance (i.e., vectors or models) that can be used as inputs to predictive models that determine their impact on the levels of the components of current operation value and market sentiment. The use of element of value summaries, market value factor summaries, vector inputs and predictive models is not taught or suggested by Bonabeau. Bonabeau teaches away by relying on a combination of three part business models, expected behavior models for customers and suppliers and simulation to estimate external prices and market share (paragraphs 94 and 95) while ignoring the other elements of value and the other market value factors.

3) the method disclosed in 09/688,983/10/821,504 for optimizing activities for a commercial enterprise by analyzing a model of enterprise value and risk relies on a calculation of changes to the cost of capital for the business that is determined by the relative strength of the elements of value as quantified by a DEA analysis in order to value real options. Bonabeau does not teach or suggest anything related to DEA analysis or real option valuation and teaches away from the use of real options as discussed previously.

4) the method disclosed in 09/688,983/10/821,504 for optimizing activities for a commercial enterprise by analyzing a model of enterprise value and risk teaches and relies on scenario analysis. The inputs to the summaries of element of value and external factor performance mentioned under item 2 are analyzed in order to

identify the expected range of values for the summaries under different scenarios. The financial performance of the business is then simulated using the identified ranges under the different scenarios. The results from the scenario analysis are then used as inputs to a multi-criteria optimization analysis. Bonabeau does not teach or suggest element of value or external factor summaries (as discussed previously), the identification of ranges for element of value or external factor summaries, the development of scenarios and/or the use of scenario simulation results as inputs to an optimization analysis. Bonabeau teaches away by teaching single criteria optimization via the genetic evolution of different combinations features (VP), prices (RM) and operational methods (OA) for business models in a market space model (paragraphs 20 through 30).

- 5) the method disclosed in 09/688,983/10/821,504 for optimizing activities for a commercial enterprise by analyzing a model of enterprise value and risk teaches and relies on the use of element of value and sub-element of value level analyses. The Bonabeau disclosure teaches away from the use of element of value level analyses as it teaches an item level focus on the specific type and number of machine required for each unit of good or service (paragraph 70).
- 6) the method disclosed in 09/688,983/10/821,504 for optimizing activities for a commercial enterprise by analyzing a model of enterprise value and risk teaches and relies on measuring a number of different types of risk by element of value and external factor for each category of value. 09/688,983/10/821,504 also teaches risk management via risk transfer or risk reduction program management. Bonabeau does not teach or suggest anything related to measuring any type of risk and/or managing any type of risk via risk transfer or risk reduction program management. Bonabeau teaches away by teaching the selection of robust combinations of features (VP), prices (RM) and operational methods (OA) for business models in order to minimize the need for risk management (paragraph 59).
- 7) the method disclosed in 09/688,983/10/821,504 for optimizing activities for a

commercial enterprise by analyzing a model of enterprise value and risk teaches and relies on the use of up to four different methods for improving the financial performance: improving cash flow, improving real option value, improving market sentiment value and/or reducing risk (via management or transfer). Bonabeau teaches away from each of these four methods as it teaches that there is only one method for improving financial performance: improving the fit of the three part business models (features (VP), prices (RM) and operational methods (OA)) within a market space ecosystem (abstract, paragraphs 20 through 30).

8) the method disclosed in 09/688,983/10/821,504 for optimizing activities for a commercial enterprise by analyzing a model of enterprise value and risk teaches and relies on the analysis of market sentiment using predictive models and the element of value summaries mentioned previously. Also as mentioned previously, Bonabeau cannot support the analysis and/or optimization of market sentiment because it has no capability for identifying a relationship between the specified variables (features, prices, operational methods, customer behavior and supplier behavior) and market sentiment. This same limitation prevents the Bonabeau system from analyzing or optimizing derivatives and investments.

9) the method disclosed in 09/688,983/10/821,504 for optimizing activities for a commercial enterprise by analyzing a model of enterprise value and risk teaches and relies on the fact that building relationships with customers and vendors improves value. Bonabeau teaches away from this approach by teaching a method for business model optimization where the propensities for customers to switch suppliers each period and for suppliers to be changed every period in response to price changes are parameterized in a simple fashion as an input to the business model adaptation process. Thus, Bonabeau's method provides no means to access the enterprise value that arises by forming said relationships.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both

under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patents issuing thereon.

Signed,

/Rick M. Rauenzahn/

Rick M. Rauenzahn

Date: July 11, 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/025,794

Applicant: Jeff S. Eder

Filed: December 26, 2001

Examiner: Richard Weisberger

Art Unit: 3693

Docket No.: AR - 28

Customer No: 53787

DECLARATION UNDER RULE 132

I, Rick Rauenzahn, do hereby declare and say:

My home address is 529 Calle don Leandro, Espanola, New Mexico. I have a B.S. degree in chemical engineering from Lehigh University, an S.M. degree in chemical engineering from The Massachusetts Institute of Technology and a Ph.D. in chemical engineering from The Massachusetts Institute of Technology. I have worked in the mathematical modeling field for 26 years concentrating in the disciplines of fluid mechanics, turbulence modeling, numerical methods for partial differential equations, radiation hydrodynamics, and strength of materials. I also have extensive knowledge of computer system administration, particularly for Windows-based, Linux, and UNIX systems. I have been employed by Los Alamos National Laboratory and Molten Metal Technologies for the past 25 years.

I further declare that I do not have any direct affiliation with the application owner, Asset Reliance, Inc. or with its licensee Kantrak, Inc. As described in prior declarations I have met the inventor who is the President of Kantrak.

On July 24, 2009 I was given a copy of U.S. Patent Application 10/025,794 and U.S. Patent Application 09/994,720 which is incorporated by reference in application 10/025,794. Until that time I had not read these applications although I have read other applications that are similar including application 09/761,670, application 09/688,983, application 10/287,586 and application 10/821,504. I am totally familiar with the language of the claims and conversant with the scope thereof. I completely understand the invention as claimed.

Based on my experience and training in the field of mathematical modeling and electronic data processing, I have concluded that it would be straightforward for someone of average skill in the art to duplicate the process optimization system using the information in U.S. Patent Application 10/025,794 together with the patent applications and patents it cross-references. Specifically, U.S. Patent Application 10/025,794 together with the patent applications it cross-references fully describes:

- 1) means for storing and processing a computational model, specification and data;
Explanation:

The computer system (100) that stores and processes a computational model, specification and data is described in FIG. 3, reference numbers 100, 110 – 118, 120 – 128 and 130 – 138 and line 6, page 11 through line 5, page 13 of the specification.

- 2) means for optionally identifying an impact of each feature on one or more expected process outputs;

Explanation: The process management database (30) normally identifies features used to achieve the different performance levels. As described in the specification, simulation programs such as MatLab, Simulink, SPICE, etc. can optionally be used to generate performance data for forecast changes in process operation by calculating overall external factor consumption for the process and/or by forecasting process performance using a new set of resources and/or features.

- 3) means for mapping the expected process outputs to a computational model of organization financial performance;

Explanation: The software in block 207 prompts the user (20) via the process to matrix mapping window (904) to define the relationship between process outputs and the matrices of value and risk for the owner. This mapping will identify the categories,

components and/or element of value and/or the external factors that are affected by the process outputs. This option is used if the process management system database (30) information did not contain xml or xsd information that identified the cells that were impacted by the process outputs. Thus, the mapping information is potentially obtained from two sources: from the organization financial model and possibly from the process management system (if xml/xsd tags are available in the database information).

- 4) means for creating a financial simulation model for the organization using said mappings, model and data.

Explanation:

The Analysis section of 10/025,794 describes the development of the model used for optimization analysis.

- 5) means for using the financial simulation model to identify an optimal mix of process features that achieves financial goals selected from the group consisting of maximize organization value, minimize organization risk and combinations thereof,

Explanation:

The Analysis section of 10/025,794 describes the use of the model created as described under item 4 to optimize value, risk and combinations thereof using multi criteria optimization.

- 6) means for specifying the combination of elements of value in the organization

Explanation:

As defined in 09/994,720 the user identifies the elements of value in the organization. The specification further describes each element of value is defined by the information management system that tracks the element of value as shown below

(Soft) Asset Management Systems	Element of value
alliance management systems,	Alliances
brand management systems	Brands
capital asset system	Equipment
channel management systems	Channels
customer relationship management systems,	Customers
human resource management systems and workforce management systems	Employees
IT management systems	Information Technology
intellectual property management systems,	Intellectual Property
investor management systems	Investors
knowledge management systems	Knowledge
partner relationship management systems	Partnerships
process management systems	Processes
quality management systems	Quality
supply chain management system	Supply Chain
vendor management systems	Vendors
visitor relationship management systems	Visitors

In my opinion, it would be straightforward to apply these teachings to the analysis of a plurality of processes.

The specification does not describe identifying a contribution to an organization value and an organization risk for each of one or more elements of value, external factors and/or risks for transactional data. As described in the specification, transaction data are used to identify the expected conditions for simulations. As is well known in the art, using data for simulations does not change the output of the model being simulated. As described in the specification, model outputs are used to identify contributions. However, the only means of determining the contributions of transaction data to the model result is to change what is being modeled, thereby altering the output. Nothing in the specification suggests that the contributions of these data can be accessed in this manner.

In a similar manner, the specification does not describe identifying a contribution to an organization value and an organization risk for each of one or more elements of value, external factors and/or risks for project feature data. As described in the specification, different process features produce different process outputs. As is well known in the art, the use process feature data to identify the expected process outputs in a simulation does not change the output of the model being simulated. As described in

the specification, model outputs are used to identify contributions. However, the only means of determining the contributions of process feature data to the model result is to change what is being modeled, thereby altering the output. Nothing in the specification suggests that the contributions of these process feature data can be accessed in this manner.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patents issuing thereon.

Signed,

Rick M. Rauenzahn

A handwritten signature in black ink, appearing to read "Rick M. Rauenzahn".

Date: August 24, 2009

11. Related Proceedings Appendix (None)